

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

Re: Okemo Mountain, Inc.
Application #2S0351-16-EB (Master Plan)

MEMORANDUM OF DECISION

This decision pertains to a request for party status by Mount Holly Concerned Citizens on Public Issues (MHCCPI) in this appeal. For the reasons explained below, the Board has determined to grant party status to MHCCPI on Criterion 10 and to deny party status to MHCCPI on Criteria 9(A) and 9(K).

I. Background

On June 15, 1992, the District #2 Environmental Commission issued a decision pertaining to an application filed by Okemo Mountain, Inc. for review of a ten-year master plan that includes expansion of recreation-related activities and residential development within, and adjacent to, the Okemo Mountain Ski Resort in Ludlow. On October 14, 1992, the Applicant filed an appeal of the District Commission's June 15 findings as altered by the September 22 decision. The Applicant objects to certain findings of the District Commission concerning conformance of the master plan with the Mt. Holly Town Plan.

During the prehearing conference held on November 16, 1992,¹ MHCCPI filed a petition for party status on Criteria 9(A), 9(K), and 10. On December 1, the Applicant filed a memorandum in opposition to MHCCPI's request for party status, and on December 12 MHCCPI filed a response to the opposition. At the prehearing conference, the parties agreed that the Board could take notice of filings and decisions concerning MHCCPI's party status in two previous cases concerning Okemo: the Mid-Mountain Lodge case (#2S0351-7A-EB) and the Game Fair case (Declaratory Ruling request #268).

On December 17, 1992, the Board deliberated in Brandon but was not able to reach a decision.* On February 24, 1993, the Board again deliberated and reached a decision.

¹This prehearing conference was convened by Acting Chair Darby Bradley. Elizabeth Courtney, Chair of the Board, is now chairing this appeal.

²A majority of the total number of Board Members is required to take any action. See, 1 V.S.A. § 172.

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II. Decision

MHCCPI is an organization composed of more than fifty property owners, taxpayers, and voters in the Town of Mount Holly. The purpose of the organization is to protect the natural environment in the Town of Mount Holly, the region, and the state. The development that is the subject of Okemo's master plan could have significant effects on the interests of the individuals who live in the area. Accordingly, the individuals would be eligible for party status. If the members of MHCCPI were to seek party status on individual bases, the proceedings could become unwieldy. Accordingly, the Board grants party status to the organization provided that all the members will be represented by one person who will coordinate the testimony, cross-examine, and present argument.

With respect to the request for party status-on Criteria 9(A) and 9(K), the Board is not persuaded that these criteria are relevant to this appeal and therefore denies party status to MHCCPI on these criteria.

III. Mount Holly Town Plan

At the prehearing conference the Applicant stated that the version of the Mount Holly Town Plan which was reviewed by the District Commission had expired and was under revision, and that it would like the new Plan, if one is adopted, to apply in this appeal if it is more favorable to the Applicant. On November 24, 1992, Peter Haaren, Mount Holly Selectman, submitted a letter which stated that on August 13, 1991, the Town Plan which had expired was readopted. A Town Plan **that** is readopted remains in effect for five years. 24 V.S.A. § 4387(b). Accordingly, there is currently a Town Plan in effect.

On March 1, 1993, the Board's General Counsel Stephanie Kaplan spoke to the Town Clerk of Mount Holly. She was informed that on February 24 the Planning Commission held a hearing on a proposed revised Town Plan. **The next step is** for the Planning Commission to present the Plan to the Selectmen, and the Selectmen would hold a public hearing and then decide whether to adopt the revised Plan. Apparently the question whether the Town Plan should be put on Australian ballot for approval by the townspeople will be decided at Town Meeting tomorrow.

The Board will proceed with this appeal based upon the Town Plan that is currently in effect. If another Plan is

adopted by the Town in sufficient time for it to be used in this appeal, evidence will be taken on both Plans and the parties will be given an opportunity to file legal memoranda on the issue of which Plan applies.

IV. ORDER

1. Party status is granted to MHCCPI on Criterion 10, pursuant to Board Rule 14(B)(1)(a).

2. Party status is denied to MHCCPI on Criteria 9(A) and 9(K).

3. The Board will convene a public hearing on May 5, 1993, at a time and location to be announced.

4. On or before March 31, 1993, parties shall file final lists of witnesses and exhibits and prefiled testimony for all witnesses they intend to present.

5. On or before April 21, 1993, parties shall file prefiled rebuttal testimony and revised lists showing rebuttal witnesses and exhibits.

6. On or before April 28, 1993, parties shall file in writing all objections to the prefiled testimony and exhibits previously identified, or such objections shall be deemed waived. The term "**objections**" means objections based on the Vermont Rules of Evidence.

7. The hearings will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing to have a stenographic reporter present or a transcript of the proceedings must submit a request by March 19, 1993. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

8. All other requirements of the Prehearing Conference Report and Order dated November 25, 1992 remain in effect.

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Dated at Montpelier, Vermont this 1st day of March,
1993.

ENVIRONMENTAL BOARD



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